IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 971 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

HANSRAJ MAVJI THAKKAR

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Appearance:

1. Special Civil Application No. 971 of 1994

MR HS MUNSHAW for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner corporation. This petition was admitted by this Court by issuing rule thereon and ad.interim relief in terms of para 8(C) was granted by order dated

24.1.1994.

By way of this petition, the petitioner has challenged the award made by the Industrial Tribunal, Rajkot in Reference (IT) No. 287 of 1990 dated 18th June, 1993 whereby the tribunal has modified the order of punishment passed against the respondent workman by the appellate authority. As per the order of punishment passed by the appellate authority, the workman was ordered to be lowered by five stage for a period of five years. Said order passed by the appellate authority was modified by the tribunal and it was ordered by the tribunal under the award in question that the workman concerned be lowered down by three stages for a period of five years. Said award made by the tribunal dated 18.6.1993 has been challenged by the petitioner before this Court by way of this petition.

During the course of hearing, learned advocate Mr. Munshaw for the petitioner has submitted that the tribunal has committed gross error in modifying the punishment because serious misconduct was committed by the respondent workman. He has submitted that in respect of the accident dated 3rd November, 1983, he was dismissed from service by the competent authority against which, appeal was preferred by the workman concerned before the first appellate authority wherein he was ordered to be reinstated in service by order dated 18th August, 1986 without back wages for the intervening period and was ordered to be lowered down for a period of five years in the basic salary of conductor category. Said order passed by the first appellate authority was challenged by the workman before the second appellate board and in the second appeal, by order dated 13th January, 1988, order of punishment imposed by the first appellate authority was further revised and the workman concerned was ordered to be lowered down by five stages for a period of five years and the said order passed by the second appellate board was challenged by the workman concerned before the tribunal. Learned advocate Mr. Munshaw has submitted that since the original order of punishment of dismissal was revised initially by the first appellate authority and then by the second appellate board and, thus, sufficient leniency was shown by the corporation and, therefore, the tribunal ought not to have interfered with the order of punishment imposed by the second appellate board. He has further submitted that the allegation against the respondent was to the effect that he had recovered fares from six passengers and has not issued the tickets and has misbehaved with the checking staff and for such alleged misconduct, he

was initially dismissed which was subsequently revised by the first appellate authority and then by the second appellate board and, therefore, there was no need to interfere with such order of punishment imposed by the second appellate board.

I have considered the submissions made by Mr. Munshaw. I have also perused the award in question made by the tribunal. The tribunal has rightly considered the facts on record and considering the past record of the respondent and also considering the recurring adverse effect of the order of punishment imposed by the second appellate board, the tribunal has modified the punishment considering it as harsh and disproportionate. Thus, the tribunal has passed the proper award. The tribunal is having such powers to modify the order of punishment under section 11A of the Industrial Disputes Act, 1947 if it is satisfied that the punishment imposed against the workman concerned is unjustified. Therefore, according to opinion, the tribunal has given cogent reasons in support of its findings and has rightly appreciated the evidence before it. Therefore, according to my opinion, the tribunal has not committed any error while making such an award. No jurisdictional error and/or procedural irregularity has been committed by the tribunal while making the award in question. Learned advocate Mr. Munshaw has not been able to point out any infirmity or jurisdictional error and procedural irregularity committed by the tribunal warranting interference of this court in exercise of the powers under Article 226 and/or 227 Constitution of India. There is no substance in the petition filed by the petitioner and the same is required to be rejected.

For the reasons recorded hereinabove, this petition is rejected. Rule is discharged. There shall be no order as to costs.

12.4.2002. (H.K. Rathod,J.)

Vyas